

The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the CDC will not, in and of itself, cause affiliation with the CDC or with other CDC-owned entities. However, affiliation with the CDC or other CDC-owned entities may be caused by circumstances other than common CDC ownership.

(d) No CDC shall own more than one current or former 8(a) Program Participant having the same primary industry classification.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(c).

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§ 124.201 8(a) Program application.

It is SBA's policy that any concern or any individual on behalf of such business has the right to apply for 8(a) Program Participation whether or not there is an appearance of eligibility. However, concerns which have not been in business for two full years as described § 124.107 will not be approved for 8(a) Program Participation.

§ 124.202 Place of filing.

An application for 8(a) program admission is to be filed in the SBA field office serving the territory in which the principal place of business, as defined in § 124.100, is located. The field office will provide an applicant concern with information regarding the 8(a) program, and with all required application forms. An 8(a) application will be processed by the appropriate SBA regional office of the Division of Program Certification and Eligibility.

§ 124.203 Servicing office.

Once approved, a Program Participant will be serviced in the field office serving the territory in which the concern's principal place of business, as defined in § 124.100, is located.

§ 124.204 Applicant representatives.

Subject to the limitations of § 124.7, an applicant concern may employ at its option outside representatives in

connection with an application for 8(a) Program Participation. If the applicant chooses to employ outside representation such as an attorney, accountant, or others, the requirements of part 103 of this title dealing with the appearance and compensation of persons appearing before SBA are applicable to the conduct of the representative. In addition, representation in proceedings before the Office of Hearings and Appeals shall be limited as provided in § 134.16 of this title.

§ 124.205 Forms and documents required.

Each 8(a) applicant concern must submit the forms and attachments thereto required by SBA when making application for admission to the 8(a) program. Such forms and attachments will include, but are not limited to, financial statements and Federal personal and business tax returns.

§ 124.206 Approval and decline of applications for 8(a) program admission.

(a) *General.* The AA/MSB&COD is authorized to approve or decline applications for admission to the 8(a) program. However, denials of program admission based on his/her finding that the individual(s) claiming social and economic disadvantage are not socially and/or economically disadvantaged and/or that such individual(s) does (do) not own and/or does (do) not control the applicant concern, may be appealed to SBA's Office of Hearings and Appeals (OHA). The Division of Program Certification and Eligibility (the Division) will receive, review and evaluate all 8(a) applications. The Division will advise each program applicant within 15 days after the receipt of an application whether such application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will process an application for 8(a) Program Participation within 90 days of receipt by the Division of a complete application package. Incomplete application packages will not be processed.

(b) *Approval.* If the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall

issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to §124.110. A concern is not approved for participation in the 8(a) program until an approval letter is sent by the AA/MSB&COD to the concern. Up until that event occurs, any new information which could have an adverse affect on the application may be considered by the AA/MSB&COD. An applicant is not entitled to receive program benefits of any kind until a participation agreement is signed and SBA has approved the concern's business plan pursuant §124.301.

(c) *Decline.* If the AA/MSB&COD finds that an applicant concern does not meet all eligibility criteria, he/she will provide written notification of this finding to the applicant in a letter of decline. The letter of decline shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. The letter of decline shall inform the applicant of its rights to request reconsideration of the AA/MSB&COD's decision and/or to appeal such decision.

(1) *Reconsideration.* Every applicant has the right to request that the AA/MSB&COD reconsider his/her decline decision. Such request must be made in writing to the appropriate regional office of the Division by certified mail, return receipt requested, within 45 days of the date of service of the decline letter. As part of the reconsideration request, the applicant should include any additional information and documentation pertinent to overcoming the reason(s) for the initial decline. If the concern requests reconsideration, the AA/MSB&COD will issue a written determination on the reconsideration within 45 days of receipt of the request by the Regional Office of the Division which processed the original application. The Agency's eligibility analysis on reconsideration will consider all eligibility factors in light of all information then available to the Agency, and may approve the application, decline it for any of the same reasons cited in the initial decline or de-

cline it for reasons not previously identified. If, on reconsideration, the AA/MSB&COD finds that the applicant concern meets all eligibility criteria, he/she shall issue an approval letter to the concern. The date of the approval letter shall be the date of program certification for purposes of determining the concern's Program Term pursuant to §124.110. If, on reconsideration, the AA/MSB&COD determines that the concern does not meet all eligibility criteria, he/she will notify the applicant of this decision by letter. Such letter shall set forth findings based on the facts and in accordance with law and regulations for every material issue relating to each eligibility factor with specific reasons for each finding. If the concern is being declined solely for reasons not identified in the initial decline, the concern will be advised that SBA will treat the decline as an initial decline, and that the concern will be afforded all rights which were available to it on its initial decline.

(2) *Appeal.* An unsuccessful applicant will have the right to appeal its decline to OHA if the application is denied based solely on a negative finding of one or more of the following criteria: social disadvantage, economic disadvantage, ownership or control. The applicant, at its option, may bring such appeal either after the initial decline or after a decline on reconsideration. Petitions of appeal must conform to the requirements of §124.210 and will be handled in accordance with the procedures contained in §124.210 and part 134 of this title.

(3) *Final Agency Decision.* If a declined applicant does not request reconsideration of the decline or, if eligible under paragraph (c)(2) of this section, a declined applicant does not file an appeal with OHA within 45 days of the date of service of the decline letter, the determination of the AA/MSB&COD will become the final Agency decision. If the application is denied on reconsideration and the applicant does not appeal or have the right to appeal the denial under paragraph (c)(2) of this section, the decision of the AA/MSB&COD is the final Agency decision. If the applicant is entitled under paragraph (c)(2)

of this section to an appeal, and exercises that right, the decision of the Administrative Law Judge shall be the final Agency decision.

(4) *Reapplication for Program Participation.* A concern which has been declined for 8(a) program admission may reapply for admission to the program 12 months after the date of the final Agency decision to decline.

§ 124.207 8(a) Program exit.

A concern participating in the 8(a) program may leave the program by any of the following means:

- (a) Voluntary withdrawal.
- (b) Expiration of the Program Term established pursuant to § 124.110;
- (c) Graduation pursuant to the provisions of § 124.208;
- (d) Termination pursuant to the provisions of § 124.209.

§ 124.208 Program graduation.

(a) *General.* When an 8(a) concern is recognized as successfully completing the 8(a) program by substantially achieving the targets, objectives and goals set forth in its business plan prior to the expiration of its Program Term, and has demonstrated the ability to compete in the marketplace without assistance under the 8(a) program, its participation within the program may be determined by SBA to be completed and the firm may be graduated from the program.

(b) *Graduation criteria.* In determining whether a concern has substantially achieved the goals and objectives of its business plan and has attained the ability to compete in the marketplace without 8(a) program assistance, the following factors, among others, shall be considered by SBA. Positive overall financial trends, including but not limited to:

- (1) Profitability;
- (2) Sales, including improved ratio of non-8(a) sales to 8(a) sales;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the 8(a) concern's business and financial profile with profiles of non-8(a) businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(c) *Graduation procedures.* (1) *Letter of notification.* Upon determination by the SBA pursuant to paragraph (b) of this section that an 8(a) concern should be graduated from the 8(a) program, SBA shall notify the Participant in writing of its intent to graduate in a letter of notification. The letter of notification shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification shall also provide the Participant 45 days from the date of service of the letter to submit in writing information which would explain why the proposed basis of graduation is not warranted.

(2) *Recommendation of the Division.* Following the 45 day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. If the Division Director determines that graduation is not appropriate, he/she will so notify the Participant within 15 days of the close of the response period. If the Division Director determines that graduation is appropriate, he/she will recommend in writing to the AA/MSB&COD, within 15 days of the close of the response period, that the Participant be graduated.

(3) *Decision of the AA/MSB&COD.* Upon the recommendation of the Division Director, the AA/MSB&COD will consider the proposed graduation and the written record supporting it. If the AA/MSB&COD determines that program graduation is warranted, he/she will issue a Notice of Program Graduation to the Participant. If not, he/she will so notify the Participant.

(4) *Notice requirements.* A Notice of Program Graduation shall conform to the form, filing and service requirements of part 134 of this title, under which the appeal proceeding shall be conducted. The Notice of Program Graduation shall set forth findings, based on the facts and in accordance with law and regulations, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The Notice of Program Graduation shall also advise